

# Office of Administrative Hearings

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Janet Napolitano  
Governor

Cliff Vanell  
Director

May 17, 2006

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MAY 18 2006

CITIZENS CLEAN ELECTIONS  
COMMISSION

Todd F. Lang, Executive Director  
Citizens Clean Elections Commission  
ATTN: Paula Ortiz  
1616 West Adams Suite 110  
Phoenix, AZ 85007

Re: 04F-040043-CCE-res

In The Matter Of:

Peggy Toomey Hammann

Dear Mr. Lang:

Please find the decision of the Office of Administrative Hearings for the above entitled matter.

Sincerely,

  
Cliff J. Vanell  
Director



**Mission Statement:** We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

In the Matter of:

No. 04F-040043-CCE-res

MAY 18 2006

Peggy Toomey Hammann

ADMINISTRATIVE  
LAW JUDGE DECISION

CITIZENS CLEAN ELECTIONS  
COMMISSION

MUR 04-0043

**HEARING:** March 28, 2006. The record closed on April 3, 2006.

**APPEARANCES:** Peggy Toomey Hammann appeared on her own behalf. Assistant Attorney General Diana L. Varela represented the Arizona Citizens Clean Elections Commission.

**ADMINISTRATIVE LAW JUDGE:** Daniel G. Martin

Peggy Toomey Hammann ("Ms. Hammann") appealed a November 3, 2005 Order by the Arizona Citizens Clean Elections Commission (the "Commission") that found Ms. Hammann to have violated Arizona Revised Statutes ("A.R.S.") §§ 16-913, 16-941(A)(4) and 16-948(D), and Arizona Administrative Code ("A.A.C.") R2-20-109, and which ordered Ms. Hammann to pay to the Commission a civil penalty in the amount of \$3,576.68. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order.

**FINDINGS OF FACT**

1. In 2004, Ms. Hammann was a Democratic Party candidate for the Arizona House of Representatives, District 3. Ms. Hammann initiated her candidacy on May 19, 2004 by filing a statement of organization with the Arizona Secretary of State (the "Secretary"). See Commission Exhibit 66.

2. Ms. Hammann named herself as both the chairman and treasurer of her campaign committee, "Hammann for Legislature District 2" (the "Committee"). See *id.*<sup>1</sup>

3. On May 19, 2004, Ms. Hammann submitted to the Secretary an Application for Certification as a Participating Candidate. See Commission Exhibit 67.

<sup>1</sup> Ms. Hammann originally registered as a candidate for District 2; after redistricting, she became a candidate for District 3.

1 The purpose of that application was to qualify Ms. Hammann for public funding under  
2 the Citizens Clean Elections Act, A.R.S. § 16-940 *et seq.* (the "Act").

3 4. Under the Act, candidates who agree to abide by the statutes and rules  
4 applicable to public funding of election campaigns are entitled to receive public funds  
5 for their campaigns. The purpose of the Act, as stated in the Findings and  
6 Declarations, is

7 to create a clean elections system that will improve the integrity of  
8 Arizona state government by diminishing the influence of special-  
9 interest money, will encourage citizen participation in the political  
10 process, and will promote freedom of speech under the U.S. and  
11 Arizona Constitutions. Campaigns will become more issue-  
oriented and less negative because there will be no need to  
challenge the sources of campaign money.

12 A.R.S. § 16-940(A).

13 5. The Act is administered by the Commission, which is responsible for its  
14 enforcement. See A.R.S. § 16-955 *et seq.*

15 6. In her application, Ms. Hammann certified, under oath and penalty of  
16 perjury, that she would, among other things: (i) comply with all requirements of the Act  
17 and the Commission's rules; (ii) keep and furnish to the Commission all documentation  
18 relating to expenditures, receipts, funding, books, records and supporting  
19 documentation; and (iii) be subject to all enforcement actions by the Commission as  
20 authorized by the Act and Commission rules. See Commission Exhibit 67; *see also*  
21 A.A.C. R2-20-104(C).

22 7. On August 24, 2004, Ms. Hammann submitted to the Secretary a  
23 Participating Candidate's Application to Receive Funds and Qualifying Contributions  
24 Report. See Commission Exhibit 71.

25 8. Ms. Hammann qualified to receive Clean Elections funding on September  
26 7, 2004. See Commission Exhibit 72.

27 9. On September 7, 2004, the Commission issued Ms. Hammann's primary  
28 election funding in the amount of \$11,320.00. See Commission Exhibit 83.

29 10. Ms. Hammann won the primary election; she and another Democratic  
30 candidate qualified to run in the general election.

1           11. On September 8, 2004, the Commission issued Ms. Hammann's general  
2 election funding in the amount of \$16,980.00. See Commission Exhibit 84.

3           12. In the general election Ms. Hammann and the second Democratic  
4 candidate ran against two Republican candidates, Trish Groe and Nancy McLain.

5           13. During the course of the general election campaign, the Martin Swanty  
6 Auto Group took out an advertisement in the Kingman Daily Miner in which it endorsed  
7 Ms. Groe and Ms. McLain. See Commission Exhibit 85. The Commission viewed the  
8 advertisement as an expenditure for which Ms. Hammann was entitled to receive  
9 matching funds, and on November 1, 2004 issued a check to Ms. Hammann in the  
10 amount of \$578.34 (*i.e.*, an amount equal to the value of the advertisement). See *id.*

11           14. On October 28, 2004, Ms. Hammann issued a check drawn on her  
12 campaign account in the amount of \$152.00 to radio station KJJJ for campaign  
13 advertising. See Commission Exhibit 5. That check was returned for insufficient funds.  
14 See *id.*; see also Commission Exhibit 65. As of the hearing date in this matter, Ms.  
15 Hammann had not paid KJJJ the amount due.

16           15. Ms. Hammann lost in the general election in November 2004.

17           16. As of December 31, 2004, the balance in Ms. Hammann's campaign  
18 account was \$28.89. See Commission Exhibit 65, at PTH0401.

19           17. During the course of the election cycle, Ms. Hammann was required to file  
20 a number of campaign finance reports ("CFRs") with the Secretary. Among others, Ms.  
21 Hammann was required to file the following CFRs: (a) the June 30 CFR; (b) the pre-  
22 primary CFR; (c) the post-primary CFR; (d) the pre-general CFR; and (e) the post-  
23 general CFR.

24           18. The June 30 CFR covered the time period from January 1, 2004 through  
25 May 31, 2004, and was required to be filed between June 1, 2004 and June 30, 2004.  
26 See Commission Exhibit 75. Ms. Hammann timely filed her June 30 CFR. See  
27 Commission Exhibit 80.

28           19. The pre-primary CFR covered the time period from June 1, 2004 through  
29 August 18, 2004, and was required to be filed between August 19, 2004 and August 26,  
30

1 2004. See Commission Exhibit 76. Ms. Hammann timely filed her pre-primary CFR.  
2 See Commission Exhibit 80.

3 20. The post-primary CFR covered the time period from August 19, 2004,  
4 through September 27, 2004, and was required to be filed between September 28,  
5 2004 and October 7, 2004. See Commission Exhibit 77. Ms. Hammann did not timely  
6 file her post-primary CFR, and was required to pay a \$50.00 late filing penalty. See  
7 Commission Exhibit 80. Ms. Hammann used a check drawn on her campaign account  
8 to pay the \$50.00 penalty. See Commission Exhibit 10, at PTH0030.

9 21. The pre-general CFR covered the time period from September 28, 2004  
10 through October 13, 2004, and was required to be filed between October 14, 2004 and  
11 October 21, 2004. See Commission Exhibit 78. Ms. Hammann timely filed her pre-  
12 general CFR. See Commission Exhibit 80.

13 22. The post-general CFR covered the time period from October 14, 2004  
14 through November 22, 2004, and was required to be filed between November 23, 2004  
15 and December 2, 2004. See Commission Exhibit 80. As of the hearing date in this  
16 matter, Ms. Hammann had not filed her post-general CFR. Consequently, Ms.  
17 Hammann has failed to account for the matching funds she received on November 1,  
18 2004.

19 23. In November 2004, the Commission randomly selected Ms. Hammann's  
20 campaign for an audit, and referred her post-primary CFR to Miller, Allen & Co., P.C.,  
21 an accounting firm in Phoenix, for the completion of that audit. See Commission Exhibit  
22 1. The Commission advised Ms. Hammann of the audit by letter dated November 17,  
23 2004. See Commission Exhibit 2.

24 24. The Commission's November 17, 2004 letter, which had been sent to Ms.  
25 Hammann at her campaign's address of record, was returned by the United States  
26 Postal Service as "attempted not known". The Commission eventually made contact  
27 with Ms. Hammann in December 2004 via e-mail; Ms. Hammann explained that she  
28 had been in Alabama attending to her critically ill father. See Commission Exhibit 4.  
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1        25. In February 2005, the Commission received information that Ms.  
2        Hammann's check to KJJJ had been returned for insufficient funds. Based on that  
3        information, the Commission extended the scope of Miller, Allen & Co.'s audit of Ms.  
4        Hammann's campaign to include Ms. Hammann's pre-general and post-general CFRs.<sup>2</sup>

5        26. On May 23, 2005, the Executive Director of the Commission (the  
6        "Executive Director") provided to the Commission a Statement of Reasons of Executive  
7        Director ("Statement of Reasons"), recommending to the Commission that it find reason  
8        to believe that Ms. Hammann had committed violations of the Act and Commission  
9        rules. See Commission Exhibit 10.

10       27. The alleged violations set forth in the Statement of Reasons were as  
11       follows:

12           a. The Executive Director alleged that based on the return of Ms.  
13           Hammann's check to KJJJ for insufficient funds, "there is reason is to believe  
14           that [Ms. Hammann] overspent her general election spending limit in violation of  
15           A.R.S. § 16-941(A)(4)." See Commission Exhibit 10.

16           b. The Executive Director alleged that Ms. Hammann used money  
17           from her campaign account to pay her post-primary CFR late filing penalty in  
18           violation of A.R.S. § 16-948(D). See Commission Exhibit 10.

19           c. The Executive Director alleged that Ms. Hammann had failed to  
20           report her receipt of general election matching funds or how those funds had  
21           been spent, and therefore that "there is reason is to believe that [Ms. Hammann]  
22           failed to comply with the reporting requirements prescribed by A.R.S. §§ 16-913,  
23           -941 and A.A.C. R2-20-109." See Commission Exhibit 10.

24        28. On May 24, 2005, the Commission notified Ms. Hammann that it would  
25        consider her case at its May 26, 2005 meeting. See Commission Exhibit 8.

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29        <sup>2</sup> Although Ms. Hammann did not file her post-general CFR, the Executive Director was able to  
30        create, for purposes of the audit, a post-general CFR based on existing information which the Executive  
      Director then provided to Miller, Allen & Co.



1           29. At its May 26, 2005 meeting, the Commission accepted the Executive  
2 Director's recommendations and found reason to believe that Ms. Hammann had  
3 violated the Act and the Commission's rules as set forth in the Statement of Reasons.  
4 In consequence of the foregoing, the Commission commenced an investigation.

5           30. On May 26, 2005, the Commission issued an Order Requiring  
6 Compliance (the "Compliance Order") pursuant to which it advised Ms. Hammann as to  
7 her alleged violations of the Act and Commission rules (as previously set forth in the  
8 Statement of Reasons). See Commission Exhibit 11.

9           31. The Compliance Order required Ms. Hammann to comply with A.R.S. §  
10 16-941(A) within 14 days of the date of the order. The Compliance Order further  
11 instructed Ms. Hammann that, during those 14 days, she could provide an explanation  
12 to the Commission, comply with the order, or enter into a public administrative  
13 settlement with the Commission. Ms. Hammann did not respond to the Compliance  
14 Order.

15           32. On June 6, 2005, the Commission issued a series of subpoenas pursuant  
16 to which it sought the production of various documents relevant to Ms. Hammann's  
17 campaign. See Commission Exhibit 12.

18           33. In August 2005, Miller, Allen & Co. issued its preliminary audit report. See  
19 Commission Exhibit 16.

20           34. By letter dated August 22, 2005, the Commission advised Ms. Hammann  
21 that it would be considering the Miller, Allen & Co. preliminary audit report at its August  
22 25, 2005 meeting. See Commission Exhibit 15. Ms. Hammann did not attend the  
23 Commission's August 25, 2005 meeting.

24           35. By letter dated August 25, 2005, the Commission advised Ms. Hammann  
25 that it had approved the Miller, Allen & Co. preliminary audit report. See Commission  
26 Exhibit 16. Ms. Hammann was provided an opportunity to comment on the preliminary  
27 audit report; she did not do so.

28           36. By letter dated September 9, 2005, the Commission advised Ms.  
29 Hammann that it would be considering the Miller, Allen & Co. final audit report at its  
30

1 September 15, 2005 meeting. See Commission Exhibit 18. Ms. Hammann did not  
2 attend the Commission's September 15, 2005 meeting.

3 37. By letter dated September 15, 2005, the Commission advised Ms.  
4 Hammann that it had approved the Miller, Allen & Co. final audit report. See  
5 Commission Exhibit 19.<sup>3</sup>

6 38. In June 2005, the Executive Director resigned. Thereafter, the  
7 Commission hired Gene Lemon ("Mr. Lemon"), a former commissioner, as an external  
8 investigative consultant in connection with Ms. Hammann's case.

9 39. On September 30, 2005, following the completion of his investigation, Mr.  
10 Lemon prepared a Probable Cause Recommendation setting forth his position on the  
11 factual and legal issues of Ms. Hammann's case. See Commission Exhibit 20.  
12 Specifically, Mr. Lemon found:

- 13 1. On October 28, 2004, [Ms. Hammann] wrote a check to  
14 KJJJ for \$152.00. The check returned due to insufficient  
15 funds in her campaign account, indicating that [Ms.  
16 Hammann] overspent her general election spending limit in  
17 violation of A.R.S. § 16-941(A)(4). In addition, [Ms.  
18 Hammann] wrote a check to herself for \$50.00 on  
19 September 2, 2004 that was returned due to insufficient  
20 funds, again indicating that [Ms. Hammann] overspent her  
21 general election spending limit in violation of A.R.S. § 16-  
22 941(A)(4).<sup>4</sup>
- 23 2. On October 12, 2004, [Ms. Hammann] wrote a check to the  
24 Secretary of State in the amount of \$50.00 to pay a late filing  
25 fee. Pursuant to A.R.S. § 16-948(D), monies in a  
26 participating candidate's account shall not be used to pay  
27 fines or civil penalties. There is probable cause to believe a  
28 violation of the Act occurred.
- 29 3. On November 1, 2004, [Ms. Hammann] received matching  
30 funds in the amount of \$528.34. [Ms. Hammann] neither  
reported receipt of the matching funds nor reported how that  
money was spent, in violation of the reporting requirements  
of A.R.S. § 16-913 and A.A.C R2-20-109.<sup>5</sup>

3 <sup>3</sup> The Administrative Law Judge considered the Miller, Allen & Co. final audit report, but finds that its contents are not directly relevant to the matters raised in this proceeding.

4 <sup>4</sup> The Commission subsequently concluded that Ms. Hammann did not receive proper notice of this alleged violation; therefore, the \$50.00 check that Ms. Hammann wrote to herself is not at issue in this matter.

5 <sup>5</sup> As set forth in Finding of Fact No. 13, the actual amount of the matching funds was \$578.34.



1           40. Based on the foregoing findings, Mr. Lemon recommended that the  
2 Commission enter an order requiring Ms. Hammann to pay civil penalties totaling  
3 \$17,520.00, as follows: (i) \$1,520.00 for exceeding her expenditure limit with respect to  
4 the \$152.00 KJJJ check that was returned for insufficient funds (an amount ten times  
5 the amount of the expenditure in accordance with A.R.S. § 16-942(A)); (ii) \$500.00 for  
6 exceeding her expenditure limit with respect to the \$50.00 check to herself that was  
7 returned for insufficient funds (an amount ten times the amount of the expenditure in  
8 accordance with A.R.S. § 16-942(A)); (iii) \$500.00 for using money from her campaign  
9 account to pay the late filing fee (an amount ten times the amount of the expenditure in  
10 accordance with A.R.S. § 16-942(A)); and (iv) \$15,000.00 for failing to report her receipt  
11 and expenditure of matching funds, which was the maximum penalty allowed under  
12 A.A.C. R2-20-222. See Commission Exhibit 20.<sup>6</sup>

13           41. Mr. Lemon's Probable Cause Recommendation advised Ms. Hammann  
14 that within 5 days from her receipt of Mr. Lemon's brief, she could respond by setting  
15 forth her position on the factual and legal issues of the case. See Commission Exhibit  
16 20. Ms. Hammann did not file a response.

17           42. On October 11, 2005, Mr. Lemon issued a Probable Cause  
18 Recommendation memorandum to the Commission, stating that he intended to  
19 proceed with his recommendation of September 30, 2005. See Commission Exhibit 21.

20           43. By letter dated October 18, 2005, the Commission advised Ms. Hammann  
21 that Mr. Lemon's Probable Cause Recommendation would be considered at the  
22 Commission's October 20, 2005 meeting. See Commission Exhibit 22.

23           44. At its October 20, 2005 meeting, the Board voted to accept Mr. Lemon's  
24 Probable Cause Recommendation and impose the recommended civil penalties. See  
25 Commission Exhibit 23.

26           45. By e-mail dated October 27, 2005, Ms. Hammann requested that the  
27 Commission re-open her case. See Commission Exhibit 24.

28 <sup>6</sup> Mr. Lemon's determination to assess a \$15,000.00 civil penalty for Ms. Hammann's failure to have  
29 reported her receipt and expenditure of matching funds was erroneous. In accordance with A.R.S. § 16-  
30 942(B), a civil penalty for a reporting violation cannot be more than twice the amount of the expenditure  
not reported. Thus, the maximum civil penalty that could be imposed against Ms. Hammann for her  
failure to have reported her receipt of \$578.34 in matching funds was \$1,156.68.

1       46. By e-mail dated October 28, 2005, Todd Lang, the Commission's new  
2 Executive Director, advised Ms. Hammann that her case would be placed on the  
3 agenda for the Commission's November 3, 2005 meeting. Mr. Lang informed Ms.  
4 Hammann that he would not recommend that her case be re-opened on the merits, but  
5 that he would be recommending a new penalty amount (to conform the penalty for Ms.  
6 Hammann's failure to have reported her receipt and expenditure of matching funds to  
7 the statutory limit imposed by A.R.S. § 16-942(B)). See Commission Exhibit 25.

8       47. By letter dated October 28, 2005, the Commission provided formal notice  
9 to Ms. Hammann that her case would be considered at the Commission's November 3,  
10 2005 meeting. See Commission Exhibit 26.

11       48. The Commission considered Ms. Hammann's case at its November 3,  
12 2005 meeting, and amended its previous Order by reducing the amount of the  
13 assessed civil penalties from \$17,520.00 to \$3,576.68. See Commission Exhibit 27, at  
14 21-28.<sup>7</sup> Ms. Hammann was present at that meeting.

15       49. On November 3, 2005, the Commission issued a written Order and Notice  
16 of Appealable Agency Action (the "Disciplinary Order") that found Ms. Hammann to  
17 have violated A.R.S. §§ 16-941(A)(4) and 16-948(D), and A.R.S. § 16-913 and A.A.C.  
18 R2-20-109. The Disciplinary Order required Ms. Hammann to pay to the Commission a  
19 civil penalty in the amount of \$3,576.68 pursuant to A.R.S. § 16-942(A) and (B), as  
20 follows: (i) \$2,020.00 for expenditures in excess of her general election spending limit  
21 (*i.e.*, ten times the sum of the checks that had been returned for insufficient funds);<sup>8</sup> (ii)  
22 \$500.00 for improper use of funds (*i.e.*, ten times the amount of the campaign account  
23 check that Ms. Hammann used to pay the late filing fee for her post-primary CFR); and  
24 (iii) \$1,056.68 for her failure to have reported her receipt of matching funds (*i.e.*, twice  
25 the amount of the matching funds not reported). See Commission Exhibit 28.

26  
27 <sup>7</sup> In calculating the revised civil penalty, the Commission erroneously relied on the matching funds  
28 figure of \$528.34 that had been used by Mr. Lemon, as opposed to \$578.34, the amount actually  
29 disbursed. Thus, strictly speaking, the Commission could have imposed an additional \$100.00 in civil  
30 penalties. However, as the Commission's Order incorporated the \$528.34 figure, and as that was the  
amount for which notice was provided to Ms. Hammann, the Administrative Law Judge has not  
recommended herein any amendment of that penalty.

<sup>8</sup> The \$2,020.00 included the \$500.00 penalty that had been assessed for the \$50.00 check that was  
returned for insufficient funds. As stated above, that check is not at issue in this matter.

1        50. The Disciplinary Order advised Ms. Hammann that she was entitled to  
2 request an administrative hearing to contest the order and to request an informal  
3 settlement conference. See Commission Exhibit 28.

4        51. On November 23, 2005, the parties participated in an informal settlement  
5 conference, at which time they reached agreement on the terms of a settlement. That  
6 settlement agreement, however, was never executed.<sup>9</sup>

7        52. On December 8, 2005, the Commission issued a Notice of Hearing and  
8 Appointment of Administrative Law Judge, pursuant to which it referred Ms. Hammann's  
9 case for hearing to the Arizona Office of Administrative Hearings. See Commission  
10 Exhibit 36. That hearing was subsequently vacated, and a second Notice of Hearing  
11 was issued on January 31, 2006 setting this matter for hearing on March 28, 2006. See  
12 Commission Exhibit 53.

13        53. The March 28, 2006 hearing convened as scheduled.

14        54. At hearing, Ms. Hammann did not offer any substantive evidence to  
15 controvert or mitigate the evidence presented by the Commission and as set forth in the  
16 above Findings of Fact. Instead, the gravamen of Ms. Hammann's presentation was  
17 that she believed the proceeding to be grossly unfair and a waste of tax dollars, and  
18 that the Commission's enforcement action would have a chilling effect on the entry of  
19 other candidates into clean elections campaigns.<sup>10</sup>

20        55. The Administrative Law Judge has considered Ms. Hammann's  
21 assertions; however, such assertions are ultimately irrelevant to the determination of  
22 the merits of Ms. Hammann's alleged violations of the Act and the Commission's rules.

23  
24  
25 <sup>9</sup> At hearing, the Administrative Law Judge ruled that the settlement agreement, and the events  
26 surrounding the negotiation (and non-execution) of that agreement, were not relevant to the determination  
27 of the merits of Ms. Hammann's alleged violations of the Act and the Commission's rules. Therefore, the  
28 Administrative Law Judge does not address that agreement further herein.

29 <sup>10</sup> Ms. Hammann also asserted that the Commission failed to effectively communicate with her during  
30 the course of its investigation. The Administrative Law Judge finds no merit to this assertion. The  
Commission sent correspondence to Ms. Hammann's address of record as it was required to do, and on  
numerous occasions sent correspondence to additional locations in an effort to ensure that Ms. Hammann  
was receiving such correspondence. To the extent that Ms. Hammann failed to receive correspondence  
(or other documentation) from the Commission, it is because she failed to properly notify the Commission  
of changes in her address.

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CONCLUSIONS OF LAW

1. In this administrative proceeding, the Commission bears the burden to prove, by a preponderance of the evidence, the violations of the Act and the Commission's rules alleged in the Disciplinary Order and the appropriateness of the penalties that have been imposed by the Commission. See A.R.S. § 41-1092.07(G)(3) and A.A.C. R2-19-119.

2. A preponderance of the evidence is "such proof as convinces the trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

3. The Administrative Law Judge addresses each of the Commission's allegations in turn.

A.R.S. § 16-941(A)(4)

4. A.R.S. § 16-941(A)(4) provides:

A. Notwithstanding any law to the contrary, a participating candidate:

\* \* \* \* \*

4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.

5. The evidence presented at hearing demonstrated that during the 2004 general election period, Ms. Hammann's \$152.00 check to KJJJ was returned for insufficient funds. The evidence further demonstrated that as of December 31, 2004, Ms. Hammann's campaign account balance was \$28.89.

6. The Administrative Law Judge concludes, in view of the foregoing, that Ms. Hammann made expenditure in excess of her general election spending limit by \$123.11, and in so doing violated A.R.S. § 16-941(A)(4).

A.R.S. § 16-948(D)

7. A.R.S. § 16-948(D) provides, in pertinent part:

Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any

1 enforcement action under this chapter. Nothing in this subsection  
2 shall prevent a participating candidate from having a legal defense  
3 fund.

4 8. The evidence presented at hearing demonstrated that Ms. Hammann did  
5 not timely file her post-primary CFR, and that she used a check drawn on her campaign  
6 account to pay the \$50.00 late filing penalty.

7 9. The Administrative Law Judge concludes, in view of the foregoing, that  
8 Ms. Hammann violated A.R.S. § 16-948(D).

9 A.R.S. § 16-913 and A.A.C. R2-20-109

10 10. A.R.S. § 16-913 provides, in pertinent part:

11 B. In any calendar year during which there is a regularly  
12 scheduled election at which any candidates, measures, questions  
13 or propositions appear or may appear on the ballot, the political  
14 committee shall file each of the following campaign finance reports:

15 \* \* \*

16 3. A postelection report, which shall be filed not more than  
17 thirty days after any election and which shall be complete through  
18 the twentieth day after the election.

19 11. A.A.C. R2-20-109 provides, in pertinent part:

20 B. Participating candidate reporting requirements. In addition  
21 to the campaign finance reports filed pursuant to A.R.S. § 16-913,  
22 participating candidates shall file the following campaign finance  
23 reports and dispose of excess monies as follows:

24 \* \* \*

25 3. Primary election and general election recap campaign  
26 finance reports. Each participating candidate shall file a campaign  
27 finance report consisting of a recap of all expenditures made in  
28 connection with an election, all contributions received in the  
29 election cycle in which such election occurs, and all payments  
30 made from such candidate's campaign fund to the Clean Elections  
Fund. If the recap campaign finance report shows any amount  
unspent by a participating candidate, the candidate, within five  
days after filing the recap campaign finance report, shall send the  
Commission a check from the candidate's campaign account that  
will return all unspent monies to the Fund.



b. The recap campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

12. The evidence demonstrated that Ms. Hammann failed to file her post-general CFR, and failed to report her receipt and expenditure of matching funds.

13. The Administrative Law Judge concludes, in view of the foregoing, that Ms. Hammann violated A.R.S. § 16-913 and A.A.C. R2-20-109.

Penalties

14. A.R.S. § 16-942(A) and (B) provide:

A. The civil penalty for a violation of any contribution or expenditure limit in [A.R.S. § 16-941] by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.

B. In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.

15. For her violation of A.R.S. § 16-941(A)(4), Ms. Hammann is subject to a civil penalty in the amount of \$1,231.10 (ten times her excess expenditure of \$123.11).

16. For her violation of A.R.S. § 16-948(D), Ms. Hammann is subject to a civil penalty in the amount of \$500.00 (ten times \$50.00, the amount of the late filing fee).

17. For her violation of A.R.S. § 16-913 and A.A.C. R2-20-109, Ms. Hammann is subject to a civil penalty in the amount of \$1,056.68 (twice the amount of her unreported contribution as determined by the Commission in its Disciplinary Order).



1 18. Based on the foregoing, the total civil penalty to be assessed against Ms.  
2 Hammann should be reduced to \$2,787.78.

3 ORDER

4 The Commission's November 3, 2005 Order is affirmed, subject to the  
5 adjustments made herein with respect to the calculation of the applicable civil penalty.  
6 Upon the effective date of the Order entered in this matter, Ms. Hammann shall pay to  
7 the Commission a civil penalty in the amount of \$2,787.78.

8  
9 Done this day, May 17, 2006.

10  
11   
12 Daniel G. Martin  
13 Administrative Law Judge  
14

15 Original transmitted by mail this 17 day of May, 2006, to:

16 Todd F. Lang, Executive Director  
17 Citizens Clean Elections Commission  
18 ATTN: Paula Ortiz  
19 1616 West Adams Suite 110  
20 Phoenix, AZ 85007

21 By Chris Fishler  
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